

DAVID EARL FRYE

IBLA 84-183

Decided May 18, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting automated simultaneous oil and gas lease application, W-87047.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a, does not contain a correct identification number in the space designated "MARK SOCIAL SECURITY NUMBER," which is the same number used in the corresponding Part A, Form 3112-6, it is not properly completed and is therefore unacceptable.

APPEARANCES: David Earl Frye, pro se; Peter E. Shimkus for Marlboro Associates, adverse party.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

David Earl Frye appeals from the November 8, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease application which had been selected with first priority for parcel WY-578 in the September 1983 drawing.

The number appearing on appellant's identification number portion of Form 3112-6a (Part B of the automated simultaneous oil and gas lease application) did not match the corresponding number on his filed Form 3112-6 (Part A of the application). 1/ Part B of appellant's application showed identification number 494 69 8213, whereas Part A showed identification number 494 64 8213. BLM cited 43 CFR 3112.2-1(g) (1982) and 43 CFR 3112.6-1(a) (1982), as controlling and rejected the application as improperly completed. 2/ BLM also cited Instruction Memorandum No. 82-193, dated

1/ For a thorough discussion of the application forms used in the automated system, see Shaw Resources, Inc., 79 IBLA 153, 159-61, 91 I.D. 122 (1984) (en banc) (Shaw II).

2/ The regulations cited in the text of the opinion are those in effect when Frye's application was filed on July 15, 1983. 43 CFR Subpart 3112 was amended in 48 FR 33648, 33678-80 (July 22, 1983), effective Aug. 22, 1983;

January 8, 1982, which states in part: "No Part B will be accepted unless * * * it has a correctly completed (darkened circle) social security number, employer identification number or Bureau of Land Management application (BAN) number."

[1] Pursuant to the Mineral Leasing Act, 30 U.S.C. § 226(c) (1982), the Secretary of the Interior is authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant. See *Udall v. Tallman*, 380 U.S. 1 (1965). Although the Secretary must lease to the first-qualified applicant, he has the power and discretion to determine who is the first-qualified applicant. *Sorensen v. Andrus*, 456 F. Supp. 499, 501 (D. Wyo. 1978), citing *Thor-Westcliffe Development, Inc. v. Udall*, 314 F.2d 257 (D.C. Cir.), cert. denied, 373 U.S. 951 (1963). The Department has promulgated regulations which provide for the simultaneous filing of applications to be drawn for priority of consideration. See 43 CFR Subpart 3112. "If the Secretary is to fulfill his obligation to lease to the first-qualified applicant, as strict a compliance with the regulations as possible is necessary." *Shearn v. Andrus*, No. 77-1228 slip op. at 6 (10th Cir. 1977), quoted in *Sorensen v. Andrus*, *supra* at 502. See *Pamela Ann Fimple*, 79 IBLA 276, 278 (1984); *Joan Chorney*, 79 IBLA 271, 272 (1984).

In *Brick v. Andrus*, 628 F.2d 213, 215 (D.C. Cir. 1980), the court noted that "[t]he Secretary, acting through the BLM and the IBLA, has consistently held that strict compliance with these [43 CFR 3112] regulations is required." This Board has consistently required strict compliance with these regulations in order to protect the rights of the second- and third-drawn applicants. *Ballard E. Spencer Trust, Inc.*, 18 IBLA 25 (1974), aff'd, *Ballard E. Spencer Trust, Inc. v. Morton*, 544 F.2d 1067 (10th Cir. 1976).

43 CFR 3112.1(a) (1982) provides in part:

An application to lease under this subpart consists of a simultaneous oil and gas lease application on the form approved by the Director, completed, signed and filed pursuant to the instructions in the application form and to the regulations of this subpart. [Emphasis added.]

Unless the applicant has completed and filed a valid application, an applicant cannot be considered as "qualified." *Joan Chorney*, *supra* at 272; *Fen F. Tzeng*, 68 IBLA 381 (1982).

The form approved by the Director, BLM, for use in the Wyoming State Office is the automated simultaneous oil and gas lease application consisting of Part A (Form 3112-6) and Part B (Form 3112-6a). 43 FR 55783 (Nov. 12, 1981). The machine-readable automated form is designed to accommodate the processing of simultaneous oil and gas lease applications. The development

fn. 2 (continued)

and in 49 FR 2113 (Jan. 18, 1984). For a discussion of these amendments, see *Shaw II*, *supra*. Notes 3 and 4 in this opinion provide the relevant provisions of Subpart 3112 as currently amended.

of the automated process is a result of BLM's efforts to expedite the issuance of leases and lessen the paperwork burden. 43 FR 55783, 55784 (Nov. 12, 1981). See Joan Chorney, *supra* at 272; Shaw Resources, Inc., 79 IBLA 153, 157-59, 91 I.D. 122 (1984), (en banc) ("Shaw II").

43 CFR 3112.2-1(g) (1982), mandates that a "properly completed" application be filed with BLM. 3/ Subpart 3112.6-1(a) provides that an application will be rejected if not filed in accordance with 43 CFR 3112.2 (1982). Although the failure to properly complete and match the identification number on both parts of the application form is not expressly included among the defects listed in 43 CFR 3112.5 (1982), that omission does not preclude denial of the application. Newman Partnership, 79 IBLA 281, 282 (1984); Donald E. Hook, 76 IBLA 367 (1983).

Where the identification numbers on Parts A and B are inconsistent, the application cannot be distinguished as distinctly that of the applicant. The rules requiring proper completion of the application forms with consistent identification numbers promote the efficient administration of the simultaneous oil and gas leasing program in view of the large number of applications submitted. See Joan Chorney, *supra* at 273. "It is well established that an automated simultaneous oil and gas lease application form Part B, form 3112-6a, which does not reflect the same identification number used on the corresponding Part A, form 3112-6, is not properly completed pursuant to the regulations and must be regarded as unacceptable." Joan Chorney, *supra* at 274. 4/

3/ 43 CFR 3112.2-1(g) (1983) provides that "[a]n application shall be unacceptable if it has not been completed: (1) In accordance with the instructions on the application form in a manner that permits automated processing; and (2) in accordance with the other requirements of subpart 3112 of this title." However, Subpart 3112.2-1(g) (1983) was recently amended by adding the phrase "or rejectable" after "acceptable" and deleting the phrase "in a manner that permits automated processing." The current provision therefore states: "[A]n application shall be unacceptable or rejectable if it has not been completed: (1) In accordance with the instructions on the application form; and (2) in accordance with the other requirements of subpart 3112 of this title." 49 FR 2113 (Jan. 18, 1984). See Shaw II, *supra* at 173.

4/ Subpart 3112.3(a) (1983), as amended by 49 FR 2113 (Jan. 18, 1984), describes applications which are deemed to be "unacceptable," and it provides:

"(a) Any Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it:

"(1) It is not timely filed in the Wyoming State Office; or

"(2) Is received in an incomplete state or prepared in an improper manner that prevents automated processing; or

"(3) Is received in a condition that prevents its automated processing; or

"(4) Is received with an insufficient fee."

The phrase "prevents automated processing" in subpart 3112.3(a)(2) should have an expansive rather than a restrictive ambit. Shaw II, *supra* at 175. It includes any deficiency which prohibits the computer from fully completing the automated program, including the matching of Part B with Part A." Id.

Frye was on notice that the application must be properly completed and filed, which means it must be received in a manner that does not prevent automated processing, including the proper indication on Form 3112-6a of the identification number used on the corresponding Form 3112-6. 47 FR 53508 (Nov. 26, 1982). When dealing with the Government, one is deemed to have knowledge of the relevant statutes and duly promulgated regulations. Federal Crop Insurance v. Merrill, 322 U.S. 380 (1947).

Shaw II, supra, Joan Chorney, supra, and Newman Partnership, supra, squarely held that the mismatching of identification numbers on Parts A and B is among the deficiencies requiring that the application be deemed unacceptable under the regulations. These cases are directly on point and therefore control the disposition of this appeal.

Here, BLM should have declared the application "unacceptable," canceled the priority which the application received, and refunded the filing fees, except for the retention of a \$75 processing fee. Shaw II, supra at 176; Joan Chorney, supra at 274.

BLM improperly rejected the application, since rejection is reserved to a limited number of situations. See Shaw II, supra at 177-78. The mismatching of identification numbers does not warrant rejection, rather it requires the application to be deemed unacceptable and returned.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office, BLM, is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge

